

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, March 13, 2002 at 8:30 AM in the Town Hall meeting chambers.

The meeting was called to order by Chairman Barlage and roll call was answered by the following:

Terry Brown	Earl Jones
Richard Lucibella	Chairman Barlage

It was noted that Mark Hanna, newly appointed alternate member, was also present in the audience but not a participant at this time.

### III. APPROVAL OF MINUTES

#### A. December 12, 2001

Mr. Jones moved to approve the December 12, 2001 minutes, seconded by Mr. Brown.

Motion carried – Yea (4)

### IV. REQUEST FOR SIX MONTH EXTENSION OF TIME FOR VARIANCE THAT WAS APPROVED FEBRUARY 14, 2001 AND EXTENDED ON AUG. 15, 2001 AT 35 HERSEY DRIVE

Chairman Barlage summarized the events leading up to this second extension request submitted by Jeff Kurtz, attorney representing Patricia Pugliese.

Henry Fricke, also representing Ms. Pugliese, advised that the delay is due to the anticipated approval by the Florida DEP and also the fact that unfortunately the events of September 11<sup>th</sup> have cause an economic impact on their client and have slowed the process. He added that the plans have now been submitted to the Town for zoning review.

Mr. Lucibella moved to grant a six-month extension for the variance approved on Feb. 14, 2001, seconded by Mr. Jones.

Motion carried – Yea (4)

### V. VARIANCE REQUESTS

#### A. An application submitted by Brian Benedict, 2 Hudson Avenue, Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development Code, Article III; Supplemental Regulations, Section 26-33; Fences, Walls and Hedges; Paragraph (a) and (c) maximum height of 4' in the required front yards as measured above the grade of the crown of the street at a point directly opposite such points of measurement and also a wall or fence from the top of wall or fence

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and shall not exceed six feet in height from the lowest grade opposite such point of measurement. The variance is to permit a 4' high vinyl fence on top of a new 3' retaining wall from the front setback to the front corner and a 6' high vinyl fence on top of a new 3' retaining wall on the side property lines, thereby creating an approximate 9' barrier to the immediate neighbors, which is located at 2 Hudson Ave. or legally described as Lot 3, Block 5, Boynton Beach Park Subdivision

Town Clerk Hancsak read the variance application by title only.

Town Clerk Hancsak noted for the record that all fees had been paid and additional correspondence was received by Ted/Lisa Ritota, 4 Hudson Ave., and Gregory Young, 15 Hudson Ave. who wrote letters in favor of the variance request. A letter was also received by David Lundquist, 6277 N. Ocean Blvd., who stated he was in favor of the Town Manager's recommendation for this variance request.

Mr. Benedict also handed the Town Clerk a letter he received just prior to the meeting from Lawrence and Rose Zizzo, 1 Hudson Ave., who wrote in favor of the variance.

Town Clerk Hancsak ascertained that all the members had gone to the site but had not spoken to the applicant. Chairman Barlage commented that he had met with the applicant's father and the property owner to the east, who stated that they had no problem with the variance and they would want the fence as high as possible.

At this point all persons intending to testify were sworn in.

Chairman Barlage and Town Clerk Hancsak read the justification of application and responses for the requested variance. The applicant stated that special conditions and circumstances exist and do not result from actions of the applicant because the building codes for new construction of which the applicant has built the home to the minimum elevations required by all agencies. He added that even with the minimum standards his property lies almost 4' higher than the adjacent properties, which means he is left with a 3' fence between his side and rear yards and the adjacent properties. He noted that the adjacent properties have pools in their back yards creating an extremely unsafe environment and also a potential 6' fall onto neighboring properties. The applicant stated that granting the variance would not confer any special privileges to other land or buildings and would be the minimum needed because granting the variance will only afford the applicant the right to create a safe and private environment for both family and neighbors and allow a fence that the code would allow without elevation issues. He added that literal interpretation of the provisions of the ordinance would deprive him and the neighbors the rights commonly enjoyed by other homeowners. The applicant stated that he believed the general intent of the ordinance regarding fencing is to afford the homeowner the right to safety, privacy, and security for their property and would therefore not be injurious to the area.

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Town Manager Dunham read his administrative comments, which included a brief summary of the request. He mentioned that the code would allow a maximum of 3' to be built on top of the 3' retaining wall.

Town Manager Dunham's comments regarding the justification of application reflected that special circumstances could exist to other lands, however, they are unintended consequences of the Town's current codes and the applicant did not create this special condition. However, he stated that the application will confirm the applicant a special privilege that is denied other property owners because his fencing will be nine feet tall as measured from both of the neighbors. He advised that literal interpretation of the provisions of this chapter would not work unnecessary and undue hardship because the code is written so that the height is measured from the lowest side of the wall. He added that the request is not the minimum variance and staff believes that a 4' fence above the 3' retaining wall would be sufficient for pool barrier screening and the County approves this height for Ocean Ridge. In conclusion, Town Manager Dunham stated that he felt that granting the variance with a 4' height would not be in harmony with the general intent of the ordinance. He added that the variance of 4' would not be injurious to the area. Therefore, his recommendation was to deny the variance as requested and consider a motion to approve a 2' high vinyl fence on top of the new 3' foot retaining wall from the front setback to the front property corner and a 4' high vinyl fence on top of a new 3' retaining wall on the side property lines.

Mr. Lucibella questioned if the residence was built at the minimum finished floor elevation. He was advised that the garage is at 8' and the residence is at 8'6", which is the minimum.

Mr. Jones stated he was concerned with the water retention of this property because of the elevation and the sloping. Town Manager Dunham stated that the building plans provide for large areas of swales and the retaining walls. Mr. Benedict commented that the residence is built to the minimum height and because of the 4' drop the retaining wall became necessary in order to meet the drainage requirements. Mr. Brown asked if the retaining wall was built right on the property wall to which he was advised that it was 3" away from the line.

At this point Town Clerk Hancsak distributed a brochure of the proposed fence.

Mr. Benedict commented that he did not have additional information to add except that he has discussed the proposed fence with his neighbors and they too would like a 6' fence in order to provide for the their privacy as well as his own. He added that he did not feel that 4' would be adequate. He added that the owner of 6260 N. Ocean Blvd. even suggested to him that the higher the fence the better.

Mr. Lucibella clarified that the request included a lower fence within the first 25' setback of the residence from Hudson Ave. Town Manager Dunham stated that the request was actually for 7' total height in the front setback and 9' total height on the side property lines.

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Atty Schoech commented that at first reading one would believe this was a self hardship, however, if the property has a 6' drop then technically the applicant would not be afforded the opportunity to have a fence at all if the adjacent owners have one. He added that the code creates a real conflict and therefore gives the opportunity to grant a variance.

Mr. Brown questioned if privacy would be considered a hardship. Atty Schoech advised that the hardship is that no fence would be allowed at all. Mr. Brown stated though, that the safety and security were still hardships.

Chairman Barlage invited the public to comment. Comm Bingham reiterated her concerns regarding high walls that decrease airflow and possibly increase no seeums and also create a mildew problem from the lack of breeze. She advised that the Town needed fences that permit the wind to blow through.

Town Manager Dunham advised the board that during the code re-write meeting discussion ensued regarding allowing wrought iron on top of solid walls or other architectural type features.

Mr. Benedict again related his concern that 4' would not be adequate. Town Manager Dunham stated that the board can consider comments from the neighbors and stressed that his comments were given based on the code requirements.

At this time the board went into executive session.

Mr. Brown commented that he concurred with the staff recommendation stating that he felt 9' was too high. He added that allowing 4' on top of the retaining wall would meet safety and security concerns and meet county and the Florida Building Code.

Mr. Lucibella stated that he realized that privacy was a concern since the structure has low windows and he agreed with the effort to be consistent, however, he also stated that the Town has heard neighbors that got together and agreed to the request. He commented that the board is directed to grant the minimum necessary and he believed the staff compromised with their recommendation.

Mr. Jones mentioned that he realized that the code requirements have forced property owners to build higher and construct retaining walls to retain drainage, however, homes built years ago adjacent to new homes compound the problem. He agreed that there were bad conflicts with the code regarding how a fence is measured. While sympathizing with the neighbors but also agreeing with Comm Bingham, Mr. Jones suggested allowing 5' on the sides with an additional 1' of some sort of lattice on top.

Chairman Barlage agreed with Mr. Jones and he did not feel granting a variance based on this suggestion would violate the code. Mr. Lucibella questioned whether Mr. Jones and Chairman Barlage were suggesting that the code requirement of 4' was inadequate. Mr.

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Jones stated that he felt 4' was adequate for safety requirements but not for the privacy issue.

Atty Diffendorf, here for Atty Spillias, stated that the state has determined that 4' was an adequate height for safety issues and that is why the Town Manager recommended this height.

Mr. Lucibella advised that he was concerned that there may be a stampede of homeowners requesting higher fences because of the height requirement and elevations of adjacent properties. He added that he agreed with Mr. Brown that 9' was just too high.

Mr. Brown moved to approve the variance as recommended by the staff which would allow an additional 2' on top of the 3' retaining wall in the front setback and an additional 4' on top of the 3' retaining wall on the side property lines. Mr. Lucibella seconded the motion.

Roll Call: Yea (Mr. Brown, Mr. Lucibella)  
Nay (Mr. Jones, Chairman Barlage)

Motion failed.

Atty Schoech advised the board that another motion could be made or the meeting could be continued to another time certain. It was questioned whether Mark Hanna, a new alternate that has been sworn in, who has been sitting in the audience could sit on the dais to complete the board. Mr. Jones commented that he would like to propose a motion first.

Mr. Jones moved to approve a modified variance to allow a 5' solid wall with 1' additional lattice on top of the 3' retaining wall on the side property lines and allow a total of 4' to match on top of the 3' retaining wall within the front setback on the side property lines. There was no second to the motion.

Atty Schoech and Atty Diffendorf determined that Mr. Hanna could come and participate as a board member.

Mr. Hanna commented that he has not visited the property. He clarified that it was conceivable that other property owners that may have to build retaining walls in the future may need to require a variance for this same type situation. Town Manager Dunham commented that it could happen and each one would have to be considered on an individual basis. Atty Schoech advised that granting a variance does not set a precedent and the board must consider circumstances to each area. Mr. Hanna also clarified that in order to make the water retention work for drainage purposes a retaining wall must be built. Town Manager Dunham commented that other homes have been built at higher elevations without retaining walls because there was ample room for swale capacity to meet the retention of 1" of rainfall in one hour.

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Mr. Jones moved to grant a modified variance to allow a 5' solid wall with 1' additional lattice on top above the 3' retaining wall on the side property lines and to allow a total of 4' to match above the 3' retaining wall on the side property lines located in the front setback. Mr. Hanna seconded the motion.

Motion carried – Yea (Mr. Jones, Mr. Hanna, Mr. Lucibella, Chairman Barlage)  
Nay (Mr. Brown)

Town Clerk Hancsak advised the applicant that they would be receiving a letter in the mail.

VI. ELECTION OF VICE CHAIRMAN

Town Clerk Hancsak explained that it was necessary for the board to elect a Vice Chairman.

The board concurred to wait until all regular members were present.

V. Adjournment

The meeting was adjourned at approximately 10:10 A.M.

ATTEST:

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Town Clerk

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Chairman Barlage  
Terry Brown  
Earl Jones  
Richard Lucibella  
Mark Hanna